

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America :
 :
 v. : File No. 1:07-cr-00026-jgm-1
 :
 John Piter Cabello, :
 a/k/a John Villegas :

ORDER
(Doc. 34)

Defendant John Cabello, proceeding *pro se*, claims that as a non-violent alien offender he is entitled to an order of immediate deportation pursuant to 8 U.S.C. § 1252(h)(2)(A). On April 24, 2007, Cabello entered a guilty plea to one count of being found as a previously-deported alien following conviction for an aggravated felony, without having obtained permission of the Attorney General for readmission to the United States (in violation of 8 U.S.C. §§ 1326(a), (b)(2)). On August 2, 2007, the Court sentenced him to a term of imprisonment of 57 months, two years of supervised release, and a special assessment of \$100.

Cabello now argues that because he is a non-violent offender, he is entitled to immediate deportation. Federal law provides that a non-violent alien offender may be deported before he finishes serving his prison term. The decision whether to deport a prisoner, however, "is a matter solely within the discretion of the Attorney General." Thye v. United States, 109 F.3d 127, 128 (2d Cir. 1997). "Although section 1252(h) (2) (A)

has been re-codified in 8 U.S.C. § 1231(a)(4)(B), courts still apply the Thye holding to claims such as the one petitioner asserts here.” Gil v. United States, 2007 WL 2293442, at *1 (E.D.N.Y. Aug. 9, 2007).

A prisoner has no private right of action to compel the Attorney General to take action with respect to deportation. See 8 U.S.C. § 1231(a)(4)(D); Gil, 2007 WL 2293442, at *1; Guerrevo v. United States, 2010 WL 2978514, at *1 (E.D.N.Y. July 26, 2010). Furthermore, the Court has no jurisdiction to review the Attorney General’s decision as to whether or not deportation is appropriate. Gil, 2007 WL 2293442, at *1. Accordingly, Cabello’s motion for immediate deportation (Doc. 34) is DENIED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 28th day of September, 2010.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
Senior United States District Judge